

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 20-CR-30

MARCOS APONTE-LEBRON,

Defendant.

**ORDER ON DEFENDANT APONTE-LEBRON'S MOTION FOR RELEASE
PURSUANT TO 18 U.S.C. §3142(i)**

Marcos Aponte-Lebron is charged in a forty-four count indictment with the following: in Count One with conspiracy to possess with intent to distribute and to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A); in Count Six with possession of eight firearms in furtherance of the drug trafficking offense charged in Count One, in violation of 18 U.S.C. § 924(c); in Count Seven with conspiracy to launder monetary instruments, in violation of Title 18, U.S.C. § 1956(h); in Counts Twenty-Seven through Thirty with attempted distribution and possession with intent to distribute who 500 grams or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B); in Count Thirty-Nine with possession with the intent to deliver 500 grams or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B); in Count Forty with possession with intent to deliver five kilograms or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A); and in Count Forty-Three with possession with intent to deliver five kilograms or

more of cocaine and 400 grams or more of fentanyl, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). (Docket # 151.) After conducting a detention hearing, I found that there was no combination of conditions that could reasonably protect the community from Aponte-Lebron and ordered him detained pending trial. Aponte-Lebron now moves, pursuant to 18 U.S.C. § 3142(i), for temporary release on the ground that he is at a high risk for contracting COVID-19 while in custody at the Waukesha County Jail and at heightened risk for getting very sick due to his diabetes. (Docket # 249.) The government has responded in opposition. (Docket # 277.)

After a defendant has been detained a judicial officer may, by subsequent order, permit the temporary release of the person “to the extent that the judicial officer determines such release to be necessary for preparation of the person’s defense or for another compelling reason.” 18 U.S.C. § 3142(i). The defendant bears the burden to show a “compelling reason” for temporary release. *See United States v. Arnaout*, No. 02 CR 892, 2002 WL 31744654, at *1 (N.D. Ill. Dec. 6, 2002) (denying motion under 18 U.S.C. § 3142(i) because defendant had not provided evidence to support its necessity); *United States v. Dupree*, 833 F. Supp. 2d 241, 246 (E.D.N.Y. 2011) (same). “The standard imposed by the statute is one of necessity, not convenience.” *United States v. Bolze*, No. 3:09-CR-93, 2010 WL 199978, at *2 (E.D. Tenn. Jan. 13, 2010).

Aponte-Lebron is forty-one years old and suffers from diabetes which he manages with daily medication. (Docket # 74.) Aponte-Lebron is correct that the court and the jails must be vigilant to protect incarcerated persons during this pandemic. However, he has not shown that the Waukesha County Jail is not meeting his medical needs in the face of the threat, that the jail is not reasonably protecting him, or that the jail would not provide appropriate care

were he to become ill. To the contrary, the government has submitted that Waukesha County Jail has taken measures to protect inmates from COVID-19. (Docket # 277 at 5.) All incoming inmates, both new and existing inmates returning to the facility, are screened to determine if they may have COVID-19. (*Id.*) If the screener suspects that an incoming inmate has COVID-19, they immediately notify medical staff. (*Id.*) Subsequently, a local emergency room must medically clear the inmate before entry into the jail. (*Id.*) Additionally, Waukesha County Jail has placed postings in the inmate housing areas regarding COVID-19, including illustrated Spanish and English instructions on hand washing. (*Id.*) The jail has increased cleaning protocols and guidance regarding disinfecting of hard surfaces and communal areas. (*Id.*) Waukesha County Jail has also cancelled public visitation to decrease the possibility of the disease entering the jail. (*Id.*) Waukesha County Jail provides access to medical personnel at all times and alternative housing for those who may become ill. (*Id.*)

Because Aponte-Lebron has not shown that the extraordinary relief of temporary release is warranted under the facts of his case, his motion is denied without prejudice.

SO ORDERED this 25 day of March, 2020, at Milwaukee, Wisconsin.

s/Nancy Joseph _____
NANCY JOSEPH
United States Magistrate Judge